

BRIEF ANSWER

Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes. There are a number of crimes listed that make an individual eligible for a U-Visa. See Form 918 instructions. The eligibility requirements are as follows:

- I. It should be noted that the victim of these crimes has to have:
 - 1) suffered substantially physically or mentally; and
 - 2) aided, is aiding, or likely to aid in the investigation in the future.
- II. If the victim has done such they must provide certification from a certified agency. In applying for form 918, a victim of a listed crime, must obtain certification of such crime from a
 - 1) Federal, State, or local law enforcement agency, prosecutor, or authority, or Federal or State judge that has the responsibility for the investigation, prosecution, or conviction. *Form 918 Supplement B Instructions.*
 - i. The certifying official must be the:

1. Head of the certifying agency or any person in a supervisory role who has been designated by the head of the agency to issue Non-Immigrant Status Certification on behalf of the agency; or
2. A Federal, state, or local judge.

b. If the certification is not signed by the head of the certifying agency then evidence of the head of the agency's designation to the certifying official should be attached. See *Form 918 Supplement B Instructions B*. Therefore, agencies such as the State Attorney's Office are advised, but not required, to supply the certification and the designation of the individual performing the certification should they use a designee.

- III. Lastly, United States Citizenship and Immigration Service (USCIS) has complete discretion to grant or deny the certification. See 8 C.F.R. § § 214.14(a)(12), (b), (c)(4). A major factor in the determination is the substantial aid standard in which the victim substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual.
- IV. Should we decide not to participate in the certification process, **as we are not required to do**, we still need to make a policy for U-Visa. Under a Brady analysis, the Florida Supreme Court has declared that a "prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf . . . including police. *Way v. State*, 760 So.2d

903 (2000). Further, *Briggs v. Hedgpath*, an unpublished U.S. District Court Case in North Carolina, has found that failing to tell a defendant of possible immigration benefits is exculpatory evidence as bias of a witness. If JSO or a local judge is providing certification and our office is not providing the information to Defendant's counsel, we will be held accountable for non-disclosure whether we knew or not. Under *Way* we are required to disclose such visa certifications even if not certified by our office.